

Appln. No. 09/704,134
Amdt. Dated March 23, 2006
Reply to Office Action of October 5, 2005

REMARKS

In the Office Action, claims 1-10 were rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Number 5,765,606 to Takemasa in view of United States Patent No. 6,023,916 to Bouthiette and United States Patent No. 6,334,980 to Hayes.

Applicant notes that Takemasa discloses a medication filling apparatus for filling a container with medications (Col. 1, lines 6-7). At column 6, line 21- column 7, line 24, Takemasa provides:

medications are dropped one by one and received by the turntable 16 . . . the medications dropped onto the turntable 16 are collected and moved to the guide 21 . . . the microprocessor 45 selects an empty holder 33, drives the holder motor 29 to rotate the holder unit 31 and positions the empty holder 33 under the dispensing port 22 of the guide 21 . . . the microprocessor 45 swings the shutter 23 outward . . . to release the dispensing port 22 . . . when the dispensing port 22 is released, the medications aligned against the inner circumferential wall of the guide 21 are collected at the dispensing port 22 . . . and moved into the holder 33 . . . the operator attaches a bar code label L, which carries the barcode indicating one type of the medications specified by the dispense data, to the side face of a vial . . . when the container is inserted into the filling section 3B through the inserting opening 6 of medication filling apparatus 1, the bar code on the bar code label L is read through the barcode reader 42 . . . the microprocessor 45 decides whether the holder 33 has been filled with a particular type of medication . . . when the specified type of medications are charged in the holder 33 . . . the microprocessor 45 selects the holder 33 filled with medications, drives the holder motor 39 to rotate the holder unit 31, and positions the holder 33 at the inserting opening 6 . . . the port of a vial V is positioned under the outlet 33 B of the holder 33 and the cover 36 is opened by the handle 37 to fill a vial V with the specified type medications for the holder 33 . . .

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In summary, the invention of Takemasa is designed to place pills into a vial V which is manually mounted to the holder 33. When dispensing pharmaceuticals into the vial V, the outlet 33b of the holder 33 of Takemasa is manually placed within the vial V. Due to the placement of the outlet 33b **within** the vial V, alignment between the vial V and the holder 33 occurs manually.

Bouthiette discloses a manual kit that is used to sort pills, tablets or capsules. The pill-sorting device disclosed in Bouthiette is made of two sliding panes with hollow bottom recesses that can be used to insert the pills into the containers of the container-defining sheet. Thus, the mechanism of Bouthiette is simply a manual mechanism which an individual uses to manually sort out individual pills or tablets.

The Examiner's finds that it would have been obvious "to modify the invention of Takemasa et al by dispensing the pharmaceutical products into product package templates, as taught by Bouthiette, in order to ensure facilitated product placement into popular compartmented containers". Applicant asserts, however, that the modification described by the Examiner is not workable and moreover is not obvious. Initially, Applicant notes that Takemasa provides no mechanism for receiving the support 1 of Bouthiette. The inserting opening 6 of Takemasa is designed to receive a vial V, as such the inserting opening is not large enough to receive the support 1 Bouthiette. If Takemasa was used to place pharmaceuticals into a support 1 as taught by Bouthiette, such support 1 would be required to be placed beneath the inserting opening 6. In accordance with the teachings of Takemasa, placement of the support 1 would be

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manual. Thus, the user would be required to hold the support 1 of Bouthiette beneath inserting opening of Takemasa. Given the distance between the outlet 33B of the holder 33 of Takemasa and the recess 1' of the Bouthiette support 1, alignment between the outlet 33B and the recess 1' of the support 1 would be difficult and would likely result in inaccurate placement of the pharmaceuticals. In addition, given the distance between the outlet 33B and the recess 1' it is likely that pharmaceuticals would bounce out of the recess 1'. In light of the reasons stated and in light of the fact that the invention of Takemasa is clearly designed for the placement of pharmaceuticals within vials, Applicant asserts that the Examiner's finding of obviousness with respect to the combination of Takemasa and Bouthiette is improper.

The Examiner also finds that the combination of Takemasa and Bouthiette does not disclose the use of an X-Y mechanical drive to move the package template. The Examiner finds, however, that it would have been obvious to use the X-Y positioning table as taught by Hayes in the combination of Takemasa and Bouthiette in order to more accurately place the products. As detailed in its earlier response, Applicant asserts that the Examiner's reliance on Hayes is improper because Hayes is directed to non-analogous art. Further, as noted above, the configuration of Takemasa requires manual placement of a vial V on the holder 33 prior to dispensing the pharmaceutical. Bouthiette requires manual placement of the pharmaceuticals within the recesses 1' and does not disclose the use of a funnel or other source from which the pharmaceuticals are dispensed. Because the placement of the vial is manual in Takemasa and placement of the product in each recess 1' of the support 1 of Bouthiette is manual, neither

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Takemasa nor Bouthiette is concerned with accurate positioning of the "package" which receives the product. Because accurate placement of the product is not at issue in Takemasa or Bouthiette, no motivation is provided to combine the X-Y positioning table of Hayes with Takemasa and/or Bouthiette. Furthermore, the use of an X-Y positioning table as taught by Hayes would not be obvious but rather would be deemed unnecessary.

With reference to the arguments stated above, Applicant asserts that claims 1- 10 are not anticipated nor rendered obvious by the references cited. Thus, Applicant respectfully requests reconsideration and allowance of claims 1-10.

In addition to the arguments presented above, Applicant notes that claim 6 has been amended to include the limitation that the product packaging machine includes a temporary storage member which receives the pharmaceuticals from the product package template. The claim further provides that the pharmaceuticals are transferred to the product package cavities from the temporary storage members.

Applicant asserts that none of the references cited teach or suggest dispensing pharmaceuticals to a template, transferring the pharmaceuticals from the template to a temporary storage member, and transferring the pharmaceuticals from the temporary storage member to the product package. Because amended claim 6 is not anticipated nor rendered obvious by the references cited, Applicant respectfully requests consideration and allowance of amended claim 6.

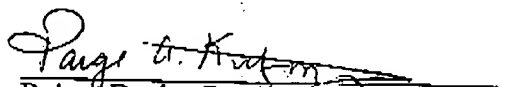
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Claims 7-10 depend from claim 6. Applicant asserts that because claim 6 is allowable, claims 7-10 are also allowable. Thus, Applicant respectfully requests reconsideration and allowance of claims 7-10.

Applicant asserts that the claims of the application are allowable over the references cited by the Examiner. Should the present claims not be deemed adequate to effectively define the patentable subject matter, the Examiner is respectfully urged to call the undersigned attorney of record to discuss the claims in an effort to reach an agreement toward allowance of the present application.

Respectfully submitted,

Date: 4/4/06


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